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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-67
Table of Allotments,) RM-10856
FM Broadcast Stations.)
(Pittsfield and Easthampton, Massachusetts, and)
Malta, New York))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 1, 2004

Released: December 3, 2004

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")¹ issued in response to a petition for rule making filed by Vox New York, LLC, licensee of FM Station WNYQ, Malta, New York, and Great Northern Radio, LLC, licensee of Station WBEC-FM, Pittsfield, Massachusetts (collectively, "Petitioners"). Petitioners filed joint comments. No other comments or counterproposals were filed. For the reasons stated below, we grant Petitioners' rulemaking petition.

2. At the request of Petitioners, the *Notice* proposed that Channel 289A, Station WNYQ, Malta, New York, be upgraded to Channel 289B1. Petitioners requested this channel upgrade pursuant to Section 1.420(g)(3) of the Commission's rules.² Since this upgrade would be short spaced to Channel 288A, Station WBEC-FM, Pittsfield, Massachusetts, the *Notice* proposed to reallocate Channel 288A from Pittsfield to Easthampton, Massachusetts and to modify Station WBEC-FM's license to reflect the change of community, thus eliminating any potential short spacing between Stations WNYQ and WBEC-FM. This reallocation of Channel 288A to Easthampton would provide Easthampton with its first local aural transmission service. Petitioner made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's rules,³ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁵

¹ *Pittsfield and Easthampton, Massachusetts, and Malta, New York*, 19 FCC Rcd 4339 (MB 2004).

² 47 C.F.R. § 1.420(g)(3).

³ 47 C.F.R. § 1.420(i).

⁴ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

3. Since Easthampton is located within the Springfield, Massachusetts Urbanized Area, Petitioner must demonstrate that Easthampton is sufficiently independent of the urbanized area that the Commission could award Easthampton a first local service preference under priority (3) of the FM allotment priorities.⁶ Under *Tuck*, we examine such proposals by considering three criteria: (1) the signal population coverage, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area.⁷ The interdependence factor is the most important criteria considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. Under criterion (1), Petitioner states that its proposed 70 dBu contour would encompass only 35 percent of the Springfield Urbanized Area. The Commission has approved reallocation proposals involving substantially greater 70 dBu coverage of a nearby urbanized area.⁸ With respect to criterion (2), Easthampton's population of 15,994 is about 10.5 percent of the population of Springfield (152,082), which is the central city of the Springfield Urbanized Area. This percentage is larger than that approved in other cases.⁹ Thus, no adverse conclusions can be drawn against Petitioner under (1) and (2).

4. Under criterion (3), which measures the relative independence of the suburban community (Easthampton) from the Springfield Urbanized Area, virtually all of the eight *Tuck* factors demonstrate Easthampton's independence from Springfield. With respect to *Tuck* factor 1, the extent to which community residents work in the larger metropolitan area, rather than the specified community, Petitioner notes that the 2000 U.S. Census data indicates that almost 25 percent of Easthampton's workers age 16 years and over work in Easthampton. This percentage is significant

⁶ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("Tuck"). See also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

⁷ In *Tuck*, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. 3 FCC Rcd at 5378. The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M.Bur. 1996).

⁸ See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (MMB 1999) (67 percent of urbanized area covered by 70 dBu contour).

⁹ See, e.g., *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 22410 (MB 2003) (smaller community had less than one percent of the central city's population).

and justifies a favorable finding under *Tuck* factor 1.¹⁰

5. Evidence proffered pursuant to *Tuck* factor 3, whether the smaller community's leaders and residents perceive Easthampton as being separate from the Springfield Urbanized area, and *Tuck* factor 4, whether the smaller community has its own local government and local officials, clearly supports favorable findings for Easthampton concerning these factors. Easthampton was chartered as a town in 1809 and has a long-established identity separate from that of Springfield. In addition Easthampton has its own local government including a Mayor and nine-person City Council and several administrative departments including a Health Department, Zoning Board of Appeals, Public Works Department, and others. Under *Tuck* factor 8, Easthampton provides its residents with many fundamental services. It provides a Fire Department, Police Force, public works and parks and recreation services. Under *Tuck* factor five, Easthampton earns a favorable finding because it has its own zip code. Under *Tuck* factor 6, Easthampton has numerous commercial establishments and other facilities, including many businesses that use "Easthampton" in their names as well as medical and dental offices. Thus, Easthampton receives a favorable finding under *Tuck* factor 6. Insofar as *Tuck* factors 2 and 7 are concerned, Easthampton earns affirmative findings because Easthampton residents may turn to several media outlets outside of Springfield for coverage of local events and public affairs. Springfield is located in Hampden County, whereas Easthampton is located in Hampshire County. The Daily Hampshire Gazette is published in Northampton, which is in Hampshire County, and has offices in Easthampton and Amherst. Petitioners assert that this publication serves most of Franklin and Hampshire Counties and provides coverage of local events and public affairs and also provides advertisers with a means of reaching consumers in those counties. In addition, Easthampton residents may obtain information about local government affairs and schedules of upcoming information through the city's internet site and the city's internet search engine for local information such as local news and businesses. Thus, under all factors, Easthampton deserves favorable findings. In conclusion, the reallocation of Channel 288A from Pittsfield to Easthampton is not prohibited by *Tuck*.

6. We find that the public interest would be served by upgrading Channel 289A, Station WNYQ, Malta, New York, to Channel 289B1 because it will provide new service to a net gain area of 2,287 square kilometers serving 339,405 persons. By changing its community of license from Pittsfield to Easthampton, the licensee of Station WBEC-FM will provide new service to a gain area containing 394,889 persons. The size of the gain and loss areas will be identical and encompass 2,404 square kilometers. Both the gain and loss areas of Station WBEC-FM are well served with five or more services. We also find that reallocating Channel 288A, Station WBEC-FM, from Pittsfield to Easthampton would result in a preferential arrangement of allotments under the FM allotment priorities because Easthampton would receive its first local aural transmission service. Easthampton is an incorporated community with a 2000 U.S. Census population of 15,994 persons. Thus, under the FM allotment priorities, retaining the allotment of Channel 288A at Pittsfield only satisfies priority (4) (other public interest matters), while the reallocation of Channel 288A to Easthampton will satisfy priority (3) (first local service). We also observe that the reallocation of Channel 288A to Easthampton would not deprive Pittsfield of its sole local aural transmission outlet because Pittsfield would

¹⁰ See Exhibit 2 of Great Northern Radio, LLC's Petition for Rule Making. The Commission has found that 16 percent of a community's workforce employed in the community is sufficient to support a favorable finding under *Tuck* factor 1. See *Anniston and Ashland, Alabama, and College Park, Georgia, et al.*, 16 FCC Rcd 3411 (MMB 2001).

continue to be served by three AM and three FM stations.¹¹ Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,¹² we will modify the license of Station WBEC-FM to specify operation on Channel 288A at Easthampton, Massachusetts.

7. Consistent with the technical requirements of the Commission's rules, Channel 289B1 can be allotted to Malta, New York, utilizing coordinates of 42-58-17 NL and 73-40-52 WL with a site restriction of 9.1 kilometers (5.7 miles) east of Malta. Channel 288A can be allotted to Easthampton, Massachusetts, in conformity with the technical requirements of the Commission's rules, utilizing coordinates of 42-18-52 NL and 72-41-18 WL, with a site restriction of 5.5 kilometers (3.4 miles) north of Easthampton. .

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

9. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective January 18, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Easthampton, Massachusetts	288A
Pittsfield, Massachusetts	240A, 269A
Malta, New York	289B1

10. IT IS FURTHER ORDERED, that the petition for rule making filed by Vox New York, LLC, and Great Northern Radio, Inc., IS GRANTED.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Vox New York, LLC for FM Station WNYQ, Malta, New York, IS MODIFIED to specify operation on Channel 289B1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless

¹¹ The three AM stations are: WUHN, 1110kHz; Station WBRK, 1340 kHz; and WBEC, 1420 kHz. The three FM stations are: WTBR-FM, Channel 209A; WUPE, Channel 240A; and Station WBRK-FM, Channel 269A.

¹² 47 C.F.R. § 1.420(i).

the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Great Northern Radio, LLC for Station WBEC-FM, Pittsfield, Massachusetts, IS MODIFIED to specify operation on Channel 288A at Easthampton, Massachusetts, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Vox New York, LLC, licensee of FM Station WNYQ, and Great Northern Radio, LLC, licensee of Station WBEC-FM, are each required to submit a rule making fee in addition to the fee required for the application to effectuate the upgrade in channel for FM Station WNYQ and the application to effectuate the change in community of license for Station WBEC-FM, Channel 288A, from Pittsfield, Massachusetts, Easthampton, Massachusetts, at the time their Form 301 applications are submitted.

14. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

15. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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